



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 2784-00

27 July 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you reenlisted in the Marine Corps on 6 June 1958 after three years of prior honorable service. Your record shows that you served without disciplinary incident.

Your record reflects that on 29 December 1963 you submitted a written statement in which you admitted to participating in homosexual acts with your shipmates without their consent and while they were sleeping. You also submitted a written request for an undesirable discharge in order to avoid trial by court-martial for your participation in homosexual acts. Your record further shows that prior to submitting your request for discharge, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your commanding officer recommended that you be issued an undesirable discharge by reason of unfitness due to homosexual involvement. The Board found your request was granted on 10 January 1964 and as a result of this action, you were spared the stigma of a court-martial conviction and the potential

penalties of a punitive discharge and confinement at hard labor. You received the other than honorable discharge on 21 January 1964.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your contention that you would like you discharge upgraded in accordance with the current policies regarding homosexuals in the military. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your admission to participating in homosexual acts on several occasions without the consent of your partners. In your case, this activity is sufficient, even under current standards, to warrant a discharge other than honorable discharge conditions. The Board also concluded that you received the benefit of your bargain with the Marine Corps when you were discharged at your request rather than being tried by court-martial, which could have resulted in a lengthy period of confinement as well as a punitive discharge. The Board concluded your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director